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State v. Lee Appellant's Brief Dckt. 40330

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 40330
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2001-12154
v.)	
)	
DAVID LEROY LEE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

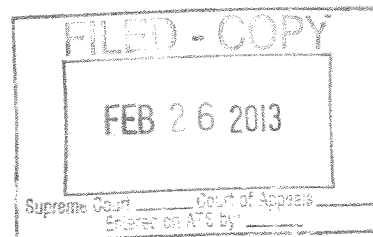
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STATEMENT OF THE CASE

Nature of the Case

David Leroy Lee appeals from the district court's order denying his motion to strike surplus language declaring him to be "a serious pedophile" in need of "closer watch" by the authorities from the judgment of acquittal ordered to be entered by the Idaho Supreme Court following its decision in *State v. Lee*, 153 Idaho 559 (2012). On appeal, Mr. Lee maintains that the district court acted without subject matter jurisdiction in declaring him to be "a serious pedophile" in need of "closer watch" by the authorities and thereby erred in denying his motion to strike. He further asserts that the district court abused its discretion in denying his motion to strike when it added the language in violation of Idaho Appellate Rule 38(c), and that it deprived him of his right to procedural due process when it found him to be "a serious pedophile" in need of "closer watch" by the authorities without providing him with notice of its intent to do so or an opportunity to be heard on the issue.

Statement of the Facts and Course of Proceedings

In its decision in Mr. Lee's favor in *State v. Lee*, 153 Idaho 559 (2012), the Idaho Supreme Court ordered the district court to issue a judgment of acquittal upon remand, specifically providing, "This Court vacates the district court's Amended Judgment of Conviction, and remands this case with instructions for the entry of a judgment of acquittal." *Lee*, 153 Idaho at 563. On remand, the district court issued a Judgment of Acquittal After Remittitur, the body of which reads as follows:

The defendant was convicted after a trial by jury of the offense of Failing to Register as a Sex Offender. He registered in Idaho, cut off his ankle monitor and fled and was eventually located in Belize after traveling in the United States. The Court of Appeals affirmed the conviction by its Opinion

No. 38 filed June 29, 2011. The Supreme Court overturned that decision by its Opinion No. 109 filed July 5, 2012. Based upon the Supreme Court's decision and a remittitur having entered, the verdict of the jury is vacated and a judgment of acquittal is entered. *Because he is a serious pedophile, it is hoped that the authorities will be able to keep a closer watch on him in the future.* As mandated, a judgment of acquittal is entered.

It is so ordered.

(40330 R., p.7 (emphasis added).)

Trial counsel for Mr. Lee then filed a Motion to Strike Surplusage in Judgment of Acquittal After Remittitur, seeking to have the language declaring Mr. Lee a "serious pedophile" in need of "closer watch" by the authorities stricken from the judgment of acquittal. (40330 R., pp.8-14.) The district court, appears to have written in the margin of the Motion, "What good name?" The district court's marginalia was in response to the argument that, "This Court, in labeling Mr. Lee a 'serious pedophile' attached a badge of infamy to him and called into question his good name, reputation, honor, and integrity without providing him notice and a meaningful opportunity to be heard" in violation of his due process rights. (40330 R., p.14.)

The primary arguments advanced in the Motion to Strike were that the district court lacked subject matter jurisdiction to make the finding of fact that Mr. Lee was "a serious pedophile" for whom "it is hoped that the authorities will be able to keep a closer watch on him in the future," and abused its discretion in adding the findings of fact because it lacked authority under Idaho Appellate Rule 38(c) to do so. (40330 R., pp.9-13.)

Ultimately, the district court denied the Motion, reasoning,

The Court entered the Judgment of Acquittal as required by the remittitur. He prevailed on appeal because of the Supreme Court's interpretation of the statute but after he had been sentenced, after he had a presentence report prepared and he had been given an opportunity to challenge all the

information contained in that report so he was afforded due process. He is subject to a duty to register which pre-existed this case. Presumably, the Parole Board will have access to all of the information generated as a result of the defendant's prior offenses. The record is abundantly clear that the defendant is a risk to children. The Motion to Strike is denied.

(40330 R., p.16.) Nowhere in its order did the district court address Mr. Lee's primary arguments concerning the district court's lack of subject matter jurisdiction or authority under Idaho Appellate Rule 38(c) to make findings of fact or do anything other than enter a judgment of acquittal on remand. (40330 R., p.16.)

Mr. Lee filed a Notice of Appeal timely from the district court's order denying his motion to strike. (40330, p.17.)

ISSUES

1. Did the district court err when it denied Mr. Lee's motion to strike surplus language declaring him to be "a serious pedophile" in need of "closer watch" by the authorities from the judgment of acquittal because, under the language of the remittitur, it lacked subject matter jurisdiction to make such factual findings?
2. Did the district court abuse its discretion when it denied Mr. Lee's motion to strike surplus language declaring him to be "a serious pedophile" in need of "closer watch" by the authorities from the judgment of acquittal because, in doing so, it failed to act consistently with the legal standards applicable on remand?
3. Did the district court violate Mr. Lee's right to procedural due process when, without notice or a hearing, it declared him to be "a serious pedophile" in need of "closer watch" by the authorities?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Lee's Motion To Strike Surplus Language Declaring Him To Be "A Serious Pedophile" In Need Of "Closer Watch" By The Authorities From The Judgment Of Acquittal Because, Under The Language Of The Remittitur, It Lacked Subject Matter Jurisdiction To Make Such Factual Findings

A. Introduction

Mr. Lee asserts that the district court erred when it denied his motion to strike surplus language from the judgment of acquittal because, under the language of the remittitur, it lacked subject matter jurisdiction to make such factual findings.

B. Standard Of Review

"Issues about the district court's jurisdiction are issues of law over which the [Idaho Supreme] Court exercises independent review." *State v. Rogers*, 140 Idaho 223, 227 (2004).

C. The District Court Erred When It Denied Mr. Lee's Motion To Strike Surplus Language Declaring Him To Be "A Serious Pedophile" In Need Of "Closer Watch" By The Authorities From The Judgment Of Acquittal Because, Under The Language Of The Remittitur, It Lacked Subject Matter Jurisdiction To Make Such Factual Findings

In *Rogers*, the Idaho Supreme Court explained,

"Jurisdiction over the subject matter" has been variously defined as referring to (1) the nature of the cause of action and of the relief sought; (2) the class of cases to which the particular one belongs and the nature of the relief sought; (3) the power of a court to hear and determine cases of the general class to which the particular one belongs; (4) both the class of cases and the particular subject matter involved; and (5) the competency of the court to hear and decide the case.

Rogers, 140 Idaho at 228.

While an order remanding a case to the district court can confer subject matter jurisdiction to take actions directed by the appellate court, the degree to which jurisdiction is conferred is entirely dependent upon the nature of the appellate court's directive. "The general rule is that, on remand, a trial court has authority to take actions it is specifically directed to take, or those which are subsidiary to the actions directed by the appellate court." *State v. Hosey*, 134 Idaho 883, 886 (2000) (citing *Walters v. Industrial Indem. Co.*, 130 Idaho 836, 838 (1997)). No subsidiary issues arise in cases in which the only action required is a ministerial act, such as entering an amended judgment. *Hummer v. Evans*, 132 Idaho 830, 833 (1999). In *Walters*, the Idaho Supreme Court quoted the following from its opinion in *Mountain Home Lumber Co. v. Swartwout*, 33 Idaho 737 (1921):

The mandate of the reviewing court is binding upon the lower court, and must be strictly followed. Where the appellate court remands a cause with directions to enter judgment for one of the parties, the judgment of the appellate court is a final judgment in the cause, and the entry thereof in the lower court is a purely ministerial act. . . . A trial court has no authority to enter any judgment or order not in conformity with the order of the appellate court. That order is conclusive on the parties, and no judgment or order different from or in addition to that directed by it can have any effect. . . . No modification of the judgment so directed can be made by the trial court, nor can any provision be ingrafted on or taken from it.

Walters, 130 Idaho at 837-38 (ellipses in original) (quoting *Mountain Home Lumber Co.*, 33 Idaho at 740-41).

In Mr. Lee's case, the district court was ordered to perform a purely ministerial act, namely, entering a judgment of acquittal for the charge of failing to register as a sex offender. Nowhere in the grant of limited jurisdiction contained in the Idaho Supreme Court's remittitur did it indicate that the district court should provide any opinion as to Mr. Lee, let alone proclaim him to be "a serious pedophile" in need of "closer watch" by the authorities. Such language was entirely unnecessary to performance of the

ministerial act, and as such, the objectionable language was added without subject matter jurisdiction. Therefore, denial of Mr. Lee's motion to strike the unlawfully-added language was erroneous. In light of this error, Mr. Lee respectfully requests that this Court vacate the district court's order denying his motion to strike, and remand this matter for entry of an order striking the offending language from the Judgment of Acquittal After Remittitur.

II.

The District Court Abused Its Discretion When It Denied Mr. Lee's Motion To Strike Surplus Language Declaring Him To Be "A Serious Pedophile" In Need Of "Closer Watch" By The Authorities From The Judgment Of Acquittal Because, In Doing So, It Failed To Act Consistently With The Legal Standards Applicable On Remand

A. Introduction

The district court acted outside the bounds of its legal authority when it made findings of fact that Mr. Lee was "a serious pedophile" in need of "closer watch" by the authorities in the judgment of acquittal ordered by the Idaho Supreme Court because, in doing so, it failed to act consistently with the legal standards applicable on remand. As such, the district court abused its discretion when it denied Mr. Lee's Motion to Strike Surplusage in Judgment of Acquittal After Remittitur.

B. Standard Of Review

When reviewing a trial court's discretionary decision on appeal, the appellate court considers: (1) whether the district court perceived that the issue was one of discretion; (2) whether it acted within the boundaries of that discretion and consistently with any applicable legal standards; and (3) whether its decision was reached by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989) (citation omitted).

- C. The District Court Abused Its Discretion When It Denied Mr. Lee's Motion To Strike Surplus Language Declaring Him To Be "A Serious Pedophile" In Need Of "Closer Watch" By The Authorities From The Judgment Of Acquittal Because, In Doing So, It Failed To Act Consistently With The Legal Standards Applicable On Remand

Idaho Appellate Rule 38(c) provides:

When the opinion filed has become final in accordance with this rule, the Clerk of the Supreme Court shall issue and file a remittitur with the district court or administrative agency appealed from and mail copies to all parties to the appeal and to the presiding district judge or chairman of the agency. The remittitur shall advise the district court or administrative agency that the opinion has become final and that *the district court or administrative agency shall forthwith comply with the directive of the opinion.*

I.A.R. 38(c) (emphasis added).

Nowhere in the remittitur issued by the Idaho Supreme Court did the Court direct the district court to do anything other than enter a judgment of acquittal, let alone make findings of fact concerning whether Mr. Lee is "a serious pedophile" in need of "closer watch" by the authorities. (Remittitur.)¹

Because the district court's initial action in adding surplus language to the judgment of acquittal exceeded the bounds of the limited legal authority conferred by the Idaho Supreme Court in the remittitur and constituted a failure to act consistently with the applicable legal standards contained in Idaho Appellate Rule 38(c), it abused its discretion when it denied Mr. Lee's Motion to Strike. Mr. Lee respectfully requests that this Court vacate the district court's order denying his motion to strike, and remand this matter to the district court for entry of an order striking the offending language from the Judgment of Acquittal After Remittitur.

¹ Contemporaneously with this Brief, Mr. Lee has filed a Motion for Judicial Notice of the remittitur issued by the Idaho Supreme Court in the opinion underlying this appeal.

III.

The District Court Violated Mr. Lee's Right To Procedural Due Process When, Without Notice Or A Hearing, It Declared Him To Be "A Serious Pedophile" In Need Of "Closer Watch" By The Authorities

Assuming, *arguendo*, that this Court rejects the arguments set forth in Parts I and II, *supra*, Mr. Lee asserts that the district court violated his right to procedural due process when it declared him to be "a serious pedophile" in need of "closer watch" by the authorities.

Procedural due process "requires that a person, whose protected rights are being adjudicated, is afforded an opportunity to be heard in a timely manner. There must be notice and the opportunity to be heard must occur at a meaningful time and in a meaningful manner." *Ada County Hwy. Dist. v. Total Success Investments, LLC*, 145 Idaho 360, 371 (2008) (citations omitted).

In *Smith v. State*, 146 Idaho 822 (2009), the Idaho Supreme Court considered the due process concerns surrounding a then-existing statute providing for the designation, under certain circumstances, of an individual convicted of sex offenses as a Violent Sexual Predator (*hereinafter*, VSP).² Under the statutory scheme, those for whom a VSP designation was sought were not entitled to provide input to the Sex Offender Classification Board, nor were they given notice of the information being considered or the opportunity to be heard as to the reliability of the information. *Smith*, 146 Idaho at 826.

In finding the VSP statute unconstitutional, the Court cited the lack of procedural due process protections, noting, "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an

² The statute has since been repealed. 2011 Idaho Sess. Laws ch. 311, § 20.

opportunity to be heard are essential.” *Id.* (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)).³ The Court continued quoting *Constantineau* as follows, “[C]ertainly where the State attaches a ‘badge of infamy’ to the citizen, due process comes into play.” *Id.* (brackets in original). The Idaho Supreme Court explained, “We take it as a given that the label of ‘violent sexual predator’ is a ‘badge of infamy’ that necessitates due process protections.” *Id.*

As in *Smith*, the district court placed a “badge of infamy” upon Mr. Lee. More troubling than the scenario found unconstitutional by the Court in *Smith*, the district court here had no statutory authority to so label Mr. Lee; it simply chose to attach such a label gratuitously and without notice or an opportunity to be heard.

The district court’s reasoning in its order denying his motion to strike, that “he was afforded due process” because its factual findings were based on information contained in the presentence investigation report (*hereinafter*, PSI) prepared following his wrongful conviction is erroneous because, even assuming that the opportunity to contest the contents of a PSI satisfied the due process right to challenge the accuracy of the underlying information, the court’s order does not address the separate requirements that Mr. Lee be afforded notice of its intent to find him to be “a serious pedophile” in need of “closer watch” by the authorities and a hearing on its intent to do so.

Having deprived Mr. Lee of the requisite notice and the opportunity for a hearing, the district court violated his procedural due process rights. As such, Mr. Lee respectfully requests that this Court vacate the district court’s order denying his motion

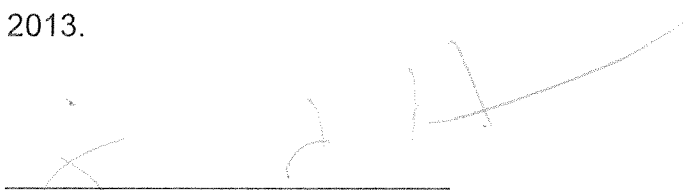
³ *Constantineau* concerned a Wisconsin statute providing for the designation of an individual as a “habitual drunkard.” *Id.*

to strike, and remand this matter to the district court for entry of an order striking the offending language from the Judgment of Acquittal After Remittitur.

CONCLUSION

For the reasons set forth herein, Mr. Lee respectfully requests that this Court vacate the district court's order denying his motion to strike, and remand this matter for entry of an order striking the offending language from the Judgment of Acquittal After Remittitur.

DATED this 26th day of February, 2013.



SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of February, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

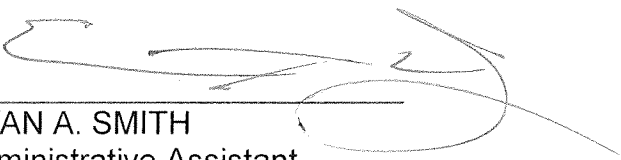
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